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09/311,582 05/14/99 ALAIA

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EXAMINER

PATEL, J

ART UNIT

PAPER NUMBER

2765

DATE MAILED:

09/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

✓0

Office Action Summary

Application No.
09/311,582

Applicant(s)
Alaia et al.

Examiner
Jagdish Patel

Group Art Unit
2765



☒ Responsive to communication(s) filed on Jul 6, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 77-114 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 85-88 is/are allowed.

☒ Claim(s) 77-84, 89-97, 99, 101-110, 112, and 114 is/are rejected.

☒ Claim(s) 98, 100, 111, and 113 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. This office action is in response to amendment filed on 7/6/00.

Response to Amendment

2. Claims 77 and 85 have been amended.
3. New claims 89-114 have been added.
4. In view of the amendment of application rejection of claims 77-88 35 U.S.C. § 112 have been withdrawn.
5. Claims 77-114 have been considered.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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7. Claims 77, 82-84, 89-91, 97, 99, 102-104, 110 and 112 are rejected under 35 U.S.C. 102(e) as being anticipated by Odom et al (US Pat. 6,058,379), hereafter referred to as Odom.

Claim 77: all limitations are analyzed as in claim 89 below except the following: (a) Offering a lot (item as defined in col. 5 L 26-28) to a plurality of bidders; and (b) receiving bids from a bidder (col. 5 L 25-33).

Claim 82,83: comparing the bid price to a market leading bid price ..; determining .. The bid price is within a predefined percentage of a market leading bid price (col. 6 L 46-48).

Claim 84: preventing bid price from being submitted (col. 6 L 40-44).

Claim 89: Odom discloses a method to limit bids in an electronic auctions, comprising:

receiving a bid for a lot from a bidder (col. 6 L 27-29);

determining whether the bid passes a fail-safe criteria (fail-safe criteria applied to the bid as discussed in col. 6 L 32-37, for example ..current highest bid..);

accepting the bid in accordance with the determination (also discussed in col. 6 L 32-37).

Claim 90 and 91: ..accepting the bid if bid passes the fail-safe criteria (system allows (accepts) bids in predetermined increments.. as discussed in col. 6 L 32-37) or ..rejecting the bid if bid fails the fail-safe criteria (col. 37-42).

Claims 97 is rejected under 35 U.S.C. 102(b) as being anticipated by Shavit et al et al (US Pat. 4,799,156), hereafter referred to as Shavit.

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Shavit discloses a method to limit bids as recited in claims 97 and 98 comprising:

receiving a first bid..(col. 13 L 51-56);

accepting the bid as one of a plurality of bids for said lot (col. 13 L 57-62, here
“outstanding” implies already accepted bids);

determining that the bid is erroneous bid (col. 13 L 57-62);

removing the first bid ...(col. 14 L 10-17, modification is rejected ..if it is not
valid..).

Claim 99 : bids are received from a plurality of bidders (abstract), and further comprising:

sending a message to each of the bidders...(col. 14 L 10-17, the distributor is
advised..);

receiving an acknowledgment to said message (inherent in Shavit because the
market system is interactive).

Claims 102-104, 110 and 112 are analyzed per their respective method claims.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness
rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 78-81, 92-96 and 105-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom as applied to claim 89 above, and further in view of Walker et al (US Pat. 5,862,223).

Claim 92: Odom fails to teach the step of accepting the bid based on the requested confirmation to accept the bid which fails to pass the fail-safe criteria as recited in claim 92.

Walker recites a method to limit bids wherein a bidder requests confirmation to accept a failed bid ("end user resubmits request.." in an iterative process, col. 38, L 57- col. 39 L 10).

Therefore, it would have been obvious to implement a provision of requesting confirmation to accept a bid that failed a fail-safe criteria and accept the bid based on the confirmation because the bidder who submitted an erroneous bid would be included in the auction in the event that the bid contained a gross error or alternatively the bids has met certain terms set forth by the auction agent.

Claim 78-81 and 93-96 : Odom fails to teach the steps recited in claims 93-95 of determining the bid within the bid is within a predefined percentage and predefined price of previous bid from the bidder, historical price or previous bid for the lot (or any object of monetary value), historic price for the lot or previous price.

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Walker teaches a method to limit bids based on fail-safe criteria (bidding rules) such as excluding bids outside a predefined percentage and predefined amount (inherently includes the claimed limitation regarding qualifications of the bid). (Col. 37, L 29-31).

Therefore, it would have been obvious to implement a bidding rules as recited by Walker which include claimed limitations of comparing the bid to various predetermined amounts as defined in claims 93-96 to determine eligibility of the bids as recited in the claims because it would limit the number of qualified bids to a manageable level and reduced complexity of auction by reducing the total number of bids. Determining eligibility of a bid based on a previous best bid and one or more determined factors would allow consideration of the bid on the basis of non-tangible considerations such the qualification of the bidder.

Claims 105-109 are analyzed as in their respective method claims 92-96.

10. Claims 101 and 114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit.
Shavit fails to teach receiving a message from the bidder that the bid is erroneous.

Official notice is taken that communication between bidders and auctioneer (who solicits bids) regarding details pertaining to submitted bids (itemized list of goods and services provided) is old and well known for example when a company solicits bids and proposals for a complex product or service from a plurality of contractors.

It would have been obvious to one of ordinary skill in the art to include a message from the bidder to notify the auctioneer (purchaser) because this would allow correction of errors in submitted bid and reduce the possibility that the bidders is excluded from the auction process.

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Allowable Subject Matter

11. Claims 85-88 are allowed.

12. The following is a statement of reasons for the indication of allowable subject matter:

Claims 85-88 recite a method to limit bids in an electronic auction, specifically addressing the aspect of auction where erroneous bids are submitted. Prior art of record (most relevant being: Odom et al. (US Pat. 6,058, 379), Shavit et al. (US Pat. 4,799,156), Walker et al. (US Pat. 5,862,223) and Fisher et al. (US Pat. 5,835,896)) fail to teach or suggest a method of limiting bids recited by the applicant which include deleting in real-time an erroneous bid and any consequential bids of the erroneous bid from the auction as recited in independent claims 85-88.

13. Claims 98, 100, 111 and 113 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior Art Cited

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagdish Patel whose telephone number is (703) 308-7837. The examiner can normally be reached Monday-Thursday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tod Swann, can be reached at (703) 308-7791.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5397.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

JNP 9/21/00



ERIC W. STAMBER
PRIMARY EXAMINER